

AMENDED IN ASSEMBLY MAY 26, 2006

AMENDED IN ASSEMBLY APRIL 18, 2006

AMENDED IN ASSEMBLY MARCH 27, 2006

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL

No. 2480

Introduced by Assembly Member Evans

February 23, 2006

An act to amend Sections 317 and 395 of the Welfare and Institutions Code, relating to dependent children.

LEGISLATIVE COUNSEL'S DIGEST

AB 2480, as amended, Evans. Dependent children: counsel.

Existing law authorizes a child or counsel for a child, with the informed consent of the child if the child is found by a court to be of sufficient age and maturity to consent, to invoke the psychotherapist-client privilege, physician-patient privilege, and clergy-penitent privilege.

This bill would provide that the child shall be presumed to be of sufficient age and maturity to consent if the child is over 12 years of age.

Existing law requires the court to appoint counsel for a child in dependency proceedings at the trial level, unless the court finds that the child would not benefit from the appointment of counsel.

This bill would require the court of appeal, *in any appellate proceeding in which the child is an appellant*, to appoint *separate* counsel for the child ~~in subsequent appellate proceedings unless the court finds that the child would not benefit from the appointment of counsel~~. *The bill would also require the court of appeal, if the child is*

not an appellant, to appoint separate counsel for the child if the court of appeal determines, after considering recommendations of the trial counsel or guardian ad litem for the child, that appointment of counsel would benefit the child. The bill would require the Judicial Council to implement this provision by promulgating a rule of court by ~~January 1, 2008~~ July 1, 2007, as specified. ~~The~~

The bill would also require the Judicial Council to report to the Legislature, by ~~January~~ July 1, 2008, information regarding caseload standards for counsel representing children before the juvenile court the status of appellate representation of dependent children, the results of implementing those provisions, and other recommendations regarding the representation of dependent children in appellate proceedings. The bill would further require the Judicial Council to report to the Legislature by January 1, 2008, information regarding case load standards for counsel representing children before the juvenile court.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. On or before January 1, 2008, the Judicial
- 2 Council shall report to the Legislature the following information
- 3 regarding caseload standards established pursuant to Section 317
- 4 of the Welfare and Institutions Code:
- 5 (a) Steps taken and progress made toward developing caseload
- 6 standards.
- 7 (b) The efforts made and the efficacy of putting caseload
- 8 standards in place for counsel representing dependent children.
- 9 (c) Any resources, support, or recommendations that might
- 10 help propel these efforts and ensure implementation statewide of
- 11 reasonable caseloads for dependency attorneys.
- 12 SEC. 2. Section 317 of the Welfare and Institutions Code is
- 13 amended to read:
- 14 317. (a) When it appears to the court that a parent or
- 15 guardian of the child desires counsel but is presently financially
- 16 unable to afford and cannot for that reason employ counsel, the
- 17 court may appoint counsel as provided in this section.
- 18 (b) When it appears to the court that a parent or guardian of
- 19 the child is presently financially unable to afford and cannot for

1 that reason employ counsel, and the child has been placed in
2 out-of-home care, or the petitioning agency is recommending that
3 the child be placed in out-of-home care, the court shall appoint
4 counsel for the parent or guardian, unless the court finds that the
5 parent or guardian has made a knowing and intelligent waiver of
6 counsel as provided in this section.

7 (c) If a child is not represented by counsel, the court shall
8 appoint counsel for the child unless the court finds that the child
9 would not benefit from the appointment of counsel. The court
10 shall state on the record its reasons for that finding. A primary
11 responsibility of any counsel appointed to represent a child
12 pursuant to this section shall be to advocate for the protection,
13 safety, and physical and emotional well-being of the child.
14 Counsel for the child may be a district attorney, public defender,
15 or other member of the bar, provided that the counsel does not
16 represent another party or county agency whose interests conflict
17 with the child's interests. The fact that the district attorney
18 represents the child in a proceeding pursuant to Section 300 as
19 well as conducts a criminal investigation or files a criminal
20 complaint or information arising from the same or reasonably
21 related set of facts as the proceeding pursuant to Section 300 is
22 not in and of itself a conflict of interest. The court may fix the
23 compensation for the services of appointed counsel. The
24 appointed counsel shall have a caseload and training that ~~assures~~
25 *ensures* adequate representation of the child. The Judicial
26 Council shall promulgate rules of court that establish caseload
27 standards, training requirements, and guidelines for appointed
28 counsel for children and shall adopt rules as required by Section
29 326.5 no later than July 1, 2001.

30 (d) The counsel appointed by the court shall represent the
31 parent, guardian, or child at the detention hearing and at all
32 subsequent proceedings before the juvenile court. Counsel shall
33 continue to represent the parent or child unless relieved by the
34 court upon the substitution of other counsel or for cause. The
35 representation shall include representing the parent or the child in
36 termination proceedings and in those proceedings relating to the
37 institution or setting aside of a legal guardianship.

38 (e) The counsel for the child shall be charged in general with
39 the representation of the child's interests. To that end, the
40 counsel shall make or cause to have made any further

1 investigations that he or she deems in good faith to be reasonably
2 necessary to ascertain the facts, including the interviewing of
3 witnesses, and he or she shall examine and cross-examine
4 witnesses in both the adjudicatory and dispositional hearings. He
5 or she may also introduce and examine his or her own witnesses,
6 make recommendations to the court concerning the child's
7 welfare, and participate further in the proceedings to the degree
8 necessary to adequately represent the child. In any case in which
9 the child is four years of age or older, counsel shall interview the
10 child to determine the child's wishes and to assess the child's
11 well-being, and shall advise the court of the child's wishes.
12 Counsel for the child shall not advocate for the return of the child
13 if, to the best of his or her knowledge, that return conflicts with
14 the protection and safety of the child. In addition, counsel shall
15 investigate the interests of the child beyond the scope of the
16 juvenile proceeding and report to the court other interests of the
17 child that may need to be protected by the institution of other
18 administrative or judicial proceedings. The attorney representing
19 a child in a dependency proceeding is not required to assume the
20 responsibilities of a social worker and is not expected to provide
21 nonlegal services to the child. The court shall take whatever
22 appropriate action is necessary to fully protect the interests of the
23 child.

24 (f) Either the child or the counsel for the child, with the
25 informed consent of the child if the child is found by the court to
26 be of sufficient age and maturity to so consent, which shall be
27 presumed if the child is over 12 years of age, may invoke the
28 psychotherapist-client privilege, physician-patient privilege, and
29 clergy-penitent privilege; and if the child invokes the privilege,
30 counsel may not waive it, but if counsel invokes the privilege, the
31 child may waive it. Counsel shall be holder of these privileges if
32 the child is found by the court not to be of sufficient age and
33 maturity to so consent. For the sole purpose of fulfilling his or
34 her obligation to provide legal representation of the child,
35 counsel for a child shall have access to all records with regard to
36 the child maintained by a health care facility, as defined in
37 Section 1545 of the Penal Code, health care providers, as defined
38 in Section 6146 of the Business and Professions Code, a
39 physician and surgeon or other health practitioner, as defined in
40 former Section 11165.8 of the Penal Code, as that section read on

1 January 1, 2000, or a child care custodian, as defined in former
2 Section 11165.7 of the Penal Code, as that section read on
3 January 1, 2000. Notwithstanding any other law, counsel shall be
4 given access to all records relevant to the case which are
5 maintained by state or local public agencies. All information
6 requested from a child protective agency regarding a child who is
7 in protective custody, or from a child's guardian ad litem, shall
8 be provided to the child's counsel within 30 days of the request.

9 (g) In a county of the third class, if counsel is to be provided to
10 a child at county expense other than by counsel for the agency,
11 the court shall first utilize the services of the public defender
12 prior to appointing private counsel, to provide legal counsel.
13 Nothing in this subdivision shall be construed to require the
14 appointment of the public defender in any case in which the
15 public defender has a conflict of interest. In the interest of justice,
16 a court may depart from that portion of the procedure requiring
17 appointment of the public defender after making a finding of
18 good cause and stating the reasons therefor on the record.

19 (h) In a county of the third class, if counsel is to be appointed
20 for a parent or guardian at county expense, the court shall first
21 utilize the services of the alternate public defender, prior to
22 appointing private counsel, to provide legal counsel. Nothing in
23 this subdivision shall be construed to require the appointment of
24 the alternate public defender in any case in which the public
25 defender has a conflict of interest. In the interest of justice, a
26 court may depart from that portion of the procedure requiring
27 appointment of the alternate public defender after making a
28 finding of good cause and stating the reasons therefor on the
29 record.

30 SEC. 3. Section 395 of the Welfare and Institutions Code is
31 amended to read:

32 395. (a) (1) A judgment in a proceeding under Section 300
33 may be appealed in the same manner as any final judgment, and
34 any subsequent order may be appealed as an order after
35 judgment. However, that order or judgment shall be stayed by the
36 appeal, unless, pending the appeal, suitable provision is made for
37 the maintenance, care, and custody of the person alleged or found
38 to come within the provisions of Section 300, and unless the
39 provision is approved by an order of the juvenile court. The

1 appeal shall have precedence over all other cases in the court to
2 which the appeal is taken.

3 (2) A judgment or subsequent order entered by a referee shall
4 become appealable whenever proceedings pursuant to Section
5 252, 253, or 254 have become completed or, if proceedings
6 pursuant to Section 252, 253, or 254 are not initiated, when the
7 time for initiating the proceedings has expired.

8 (3) An appellant unable to afford counsel, shall be provided a
9 free copy of the transcript in any appeal.

10 (4) The record shall be prepared and transmitted immediately
11 after filing of the notice of appeal, without advance payment of
12 fees. If the appellant is able to afford counsel, the county may
13 seek reimbursement for the cost of the transcripts under
14 subdivision (d) of Section 68511.3 of the Government Code as
15 though the appellant had been granted permission to proceed in
16 forma pauperis.

17 ~~(b) If a child is not represented by counsel in an appellate~~
18 ~~proceeding, the court of appeal shall appoint counsel for the child~~
19 ~~unless the court of appeal finds that the child would not benefit~~
20 ~~from the appointment of counsel. Counsel may not represent~~
21 ~~another party or county agency whose interests conflict with the~~
22 ~~child's interests. The Judicial Council shall implement this~~
23 ~~section by promulgating a rule of court on or before January 1,~~
24 ~~2008. That rule shall include, but not be limited to, guidelines for~~
25 ~~appointment of counsel, duties and responsibilities of counsel,~~
26 ~~and training and experience standards for the attorneys to be~~
27 ~~appointed.~~

28 *(b) (1) In any appellate proceeding in which the child is an*
29 *appellant, the court of appeal shall appoint separate counsel for*
30 *the child. If the child is not an appellant, the court of appeal shall*
31 *appoint separate counsel for the child if the court of appeal*
32 *determines, after considering the recommendation of the trial*
33 *counsel or guardian ad litem appointed for the child pursuant to*
34 *subdivision (e) of Section 317, Section 326.5, and California*
35 *Rule of Court 1448, that appointment of counsel would benefit*
36 *the child. In order to assist the court of appeal in making its*
37 *determination under this subdivision, the trial counsel or*
38 *guardian ad litem shall make a recommendation to the court of*
39 *appeal that separate counsel be appointed in any case in which*
40 *the trial counsel or guardian ad litem determines that, for the*

1 *purposes of the appeal, the child's best interests cannot be*
2 *protected without the appointment of separate counsel, and shall*
3 *set forth the reasons why the appointment is in the child's best*
4 *interests. The court of appeal shall consider that*
5 *recommendation when determining whether the child would*
6 *benefit from the appointment of counsel. The Judicial Council*
7 *shall implement this provision by adopting a rule of court on or*
8 *before July 1, 2007, to set forth the procedures by which the trial*
9 *counsel or guardian ad litem may participate in an appeal, as*
10 *well as the factors to be considered by the trial counsel or*
11 *guardian ad litem in making a recommendation to the court of*
12 *appeal, including, but not limited to, the extent to which there*
13 *exists a potential conflict between the interests of the child and*
14 *the interests of any respondent.*

15 *(2) The Judicial Council shall report to the Legislature on or*
16 *before July 1, 2008, information regarding the status of appellate*
17 *representation of dependent children, the results of implementing*
18 *this subdivision, any recommendations regarding the*
19 *representation of dependent children in appellate proceedings*
20 *made by the California Judicial Council's Blue Ribbon*
21 *Commission on Children in Foster Care, any actions taken,*
22 *including rules of court proposed or adopted, in response to*
23 *those recommendations or taken in order to comply with the*
24 *Child Abuse Prevention and Treatment Act, as well as any*
25 *recommendations for legislative change that are deemed*
26 *necessary to protect the best interests of dependent children in*
27 *appellate proceedings or ensure compliance with the Child*
28 *Abuse Prevention and Treatment Act.*